

# Exhibit D



## SCAROLA MALONE &amp; ZUBATOV LLP

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212.757.0007 ext. 3201

March 11, 2016

Retainer Letter and Agreement

To: Mr. Andrew Ellner  
LightBox Ventures, LLC  
c/o [aellner@lightboxcap.com](mailto:aellner@lightboxcap.com)

Dear Mr. Ellner:

This letter acknowledges and confirms your agreement to retain Scarola Malone & Zubatov LLP (sometimes referred to below as "we," "SMZ" or the "Firm") and your agreement to compensate SMZ for its services in connection with issues you have with 3<sup>rd</sup> Home Ltd. and parties related to it concerning your agreement with 3<sup>rd</sup> Home Ltd. dated as of July 13, 2015, and its amendments (the "Matter").

*Scope of Services:* We are retained by you at this time to provide legal representation in connection with the Matter and possible other issues still to be defined and discussed. It is expressly understood and agreed that in the case of any request by you for additional services not mentioned in this agreement, but requested generally by you, or any service that we provide because in our judgment it is necessary in the course of representing you in connection with the Matter, then any such services shall be governed by the terms herein.

*Computation of Fees:* SMZ charges for legal services based principally on the hourly rates of the attorneys performing the work. Currently, the Firm's hourly rates range from \$495 to \$765 for partners, \$250 to \$450 for associates, \$300 to \$650 for counsel and of counsel attorneys, and \$40 to \$220 for paralegals and legal assistants. The Firm's rates may be adjusted periodically in the future, and the applicable rates for work done at any time will be those generally in effect at the time the services are rendered, whether or not we give you prior advance notice of such periodic adjustment.

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*Billing, Retainer Amounts and Disbursements and Costs:* The Firm will send you a bill periodically, typically on a monthly basis, for legal services performed through the last day of the preceding period for which no bill has been rendered. Under certain circumstances, we may render bills more or less frequently or at a particular event (such as a trial, closing or the completion of the work on the Matter). The Firm will include on its statements a charge in connection with services rendered in the amount of 3.5% of attorney time charges in lieu of typical law firm disbursement charges (*e.g.*, regular telephone charges, electronic data and electronic data transmission charges, postage charges, non-extraordinary electronic and legal and factual research charges, routine (non-voluminous) photocopying and scanning expenses and routine travel and meal expenses associated with attorney and staff overtime). The Firm will bill separately for other expenses and disbursements not expressly excluded above, such as court filing and court reporter charges, corporate filing fees, trademark and other intellectual property search and filing fees, messenger and express delivery charges, cost associated with travel outside of the New York City area, the costs associated with working with electronically stored data or so-called electronic discovery, extraordinary photocopying requirements, scanning and electronic data manipulation and data transmission work, incremental charges for electronic and database services for legal research and factual research (unless billed to us on a flat rate basis), and other extraordinary costs and charges billed by third-parties unless specifically identified in the preceding sentence as a charge that would not be billed.

*Interest on Amounts Not Promptly Paid:* You also agree to pay our statements upon presentation. Any amounts of statements not paid within 30 days of being sent to you by e-mail (or by other means, if e-mail is not practical) will bear interest at the rate of 12% per year.

*Binding Effect of Statements and Accounts Stated:* The Firm's billing procedures are designed to be as simple and clear as possible. Please ask us any questions you may have regarding each statement as soon as it is received; if you do not promptly inform us of questions or objections, we will assume that you have understood and accepted the statement as rendered. Your failure to object can be used by us to establish that you acknowledge you owe the amount in a statement — circumstances sometimes called an "Account Stated."

*Collection Costs:* In the event that the Firm is required to institute legal proceedings to collect legal fees or other charges owed by you where you had failed to timely advise us of a dispute with, question about or objection to a statement in circumstances constituting or establishing an "Account Stated" as



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described in the preceding paragraph, then you agree to pay the Firm's reasonable attorneys' fees (for its own and outside attorneys' work, as the case may be) and other costs of collection in connection with our efforts and proceedings brought to collect any amount determined to be due to us. You will be obligated to pay those collection costs if we demonstrate we have established an "Account Stated" for any amount, or if we are found to be entitled to collect only a portion of the amount we claim as due to us, if such portion exceeds two-thirds (66.666%) of the amount claimed by us, and even if no court or other finder of fact specifically finds that we are entitled to collect on "Account Stated" grounds, so long as we can demonstrate you did not promptly inform us of questions or objections to the statements in question.

*Discontinuance of Representation:* You have the right to terminate the Firm's services upon written notice at any time, and the Firm also has the right to terminate its services to you, particularly in the event you fail to pay promptly and in full each statement as submitted, you fail to cooperate with a reasonable request, or the Firm determines, in its sole discretion, that continuing services to you would be unethical, impractical, improper or otherwise inappropriate. The total outstanding amount plus any additional charges for legal services and other client charges incurred will be immediately due and payable upon termination of our representation. In the event we are your counsel of record in any matter, and you instruct us that we are not representing you any longer, or in the event we find it necessary to cease representation of you for any of the reasons stated above, then you agree to execute papers satisfactory to any court or other tribunal in such Matter with jurisdiction over our representation sufficient to relieve us of our obligations to continue representing you before the court or other tribunal, and you agree to take such steps as necessary to secure new counsel who will appear in the Matter or such steps as necessary for you, if possible, to proceed *pro se* on terms acceptable to the court or other tribunal. If you fail to take these steps promptly after we request that you do so, and if we determine, in our reasonable discretion, that it is necessary for us to withdraw from the representation by application to any court or other tribunal, then, on the same terms as you will be charged and pay for our other work under this agreement, you will pay for our time and disbursements in connection with our effort to withdraw.

*Time Limitation on Malpractice Claims:* The time within which you may file a claim for legal malpractice against us shall be one year from the date when you did discover or, through the exercise of reasonable diligence, could have discovered, the facts giving rise to such a claim. In the event we assert a claim against you to recover amounts owed us under this agreement at a time when it is too late for you to assert a malpractice claim by reason of the limitations

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in this paragraph, then nothing in this paragraph shall be construed either to limit or to expand your right to raise, in the course of legal proceedings which we have initiated for the recovery of legal fees and costs, issues in the nature of malpractice counterclaims as an offset to any recovery of such fees and costs (provided, however, that in such a circumstance, you would not be entitled to any net or affirmative recovery on such offset claim). Notwithstanding any of the above, nothing herein shall be construed to shorten our time in which to bring an action to collect amounts we believe you owe us, or lengthen the time you would otherwise have under New York law to assert a claim against us for malpractice.

*Right to Have Review of Certain Provisions by Other Counsel and Void Certain Clauses:* You have the right to consult with an attorney concerning this agreement generally. Specifically with regard to the preceding three paragraphs, you may object to one or more of those paragraphs and void such paragraph(s) within 30 days of entry into this agreement, whereupon we will have the right, at our election, to cease our work and render a statement for any of our fees or costs that remain unpaid. In such a circumstance, and if we continue to represent you, all of the provisions of this agreement except those you elect to void will survive.

*Lien:* You hereby grant us a lien in connection with any and all transactions, disputes, claims or causes of action that are the subject of our representation under this agreement to the extent any might now exist in your favor or would in the future exist in your favor. Our lien will be for any sums owing to us for any unpaid attorneys' fees, costs and expenses in connection with the Matter at the conclusion of our services, plus interest as set forth above. The lien will attach to any recovery and any other recovery or settlement you may obtain in connection with the Matter. These liens are in addition to and not in place of any that may arise in our favor by operation of applicable law.

*Client Duties:* You agree to be truthful with us, to cooperate with us, and to keep us informed of developments in connection with the Matter and otherwise relevant to our engagement by you under this agreement. You further agree to abide by this agreement and to keep us informed of your contact information, addresses, e-mail addresses, telephone numbers and whereabouts. You agree to be available and for any discussions, negotiations, settlement meetings and generally to cooperate fully with us in connection with the Matter and all aspects of our representation.

*Disclaimer of Guarantee or Assurances as to Cost:* To the extent we discuss the possible cost of any part of our work going forward, it is expressly



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understood and agreed that we are not providing a binding budget or agreeing to limit our charges in any way. You agree not to claim that there is such limit or cap or budget absent a specific later agreement to one in writing by us. Nothing in this agreement or in our statements to you will be construed as a promise or guarantee about the outcome of your Matter. We make no such promises or guarantees. There can be no assurance that you will prevail regarding the Matter or recover any sum or sums in connection with the Matter, or avoid the claim for any sum or sums in connection with the Matter, if such are in issue. Further, the Firm does not represent, guarantee or warrant the soundness or accuracy of any data obtained in connection with the Matter. Our comments, if any, about the expected or possible outcome of your Matter, are expressions of opinion only, and are not to be construed as any promise or guarantee.

*Continuing Effect.* This agreement shall apply to any additional matters we undertake on your behalf or at your direction unless we enter into an express written agreement reflecting a different arrangement. The Firm will have no responsibility to keep you informed about developments in fact or in the law which may affect legal advice or opinions rendered to you by the Firm or otherwise. In retaining us to represent you, you understand and accept that our rendering of legal advice is for your sole benefit, and that no particular results or findings are represented or warranted by us.

*Enforceability and Severability.* If any provision of this agreement is determined to be unenforceable, the parties agree that all other provisions of this agreement will be enforced notwithstanding that determination.

*Statement of Client's Rights; Arbitration under Part 137.* We enclose New York's Statement of Client's Rights, which you should review and regarding which you should call us with any questions. In accordance with New York State law, we are also required to inform you that you may also have a right to arbitrate fee disputes under Part 137 of the Rules of the Chief Administrator of the Courts (the "Part 137 Rules").

*Applicable Law.* This agreement and all other documents and instruments executed and delivered to evidence, complete, or perfect the transactions contemplated hereby and thereby will be interpreted, construed, applied and enforced in accordance with the laws of the State of New York without regard to the principles of conflicts of laws regardless of (a) where any such instrument is executed or delivered; or (b) where any payment or other performance required by any such instrument is made or required to be made; or (c) where any breach of any provision of any such instrument occurs, or any cause

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of action otherwise accrues; or (d) where any action or other proceeding is instituted or pending; or (e) any combination of the foregoing.

*Choice of Forum:* Except in cases where arbitration or mediation in New York may be required pursuant to the terms of the "Part 137 Rules" discussed above, any action to enforce, arising out of, or relating in any way to, any of the provisions of this agreement or to any services contemplated under or provided pursuant to this agreement shall be brought and prosecuted solely and exclusively in the federal or state courts located in the State of New York and the parties consent to the exclusive jurisdiction of said courts and to service of process by registered mail, return receipt requested, or by any other manner provided by law.

*Execution in Counterparts and E-Mail and Facsimile Transmissions Deemed Originals:* It is understood and agreed that this agreement may be executed in counterparts and that facsimile, e-mail, .pdf and other electronic copies of execution pages and this agreement as a whole shall be deemed and treated as originals.

*Entire Agreement:* This letter constitutes the entire understanding and agreement between the parties to it relating to SMZ's engagement as counsel in connection with the Matter. This agreement cannot be modified except by further written agreement signed by each party.

*Acceptance:* Careful review of this letter agreement and enclosures will assure your understanding of the terms of the Firm's representation. Please raise and discuss any questions with us. If this letter agreement accurately summarizes the agreement between us, please indicate your agreement, approval

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and acceptance by signing it, making a copy of it for your records and returning it to me, and we will return a full executed copy to you.


We look forward to working with you.

SCAROLA MALONE & ZUBATOV LLP

By \_\_\_\_\_  
Richard J.J. Scarola

By E-Mail  
Enclosure/Attachment

Consented to and agreed:

  
Andrew Ellner  
LightBox Ventures, LLC